

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEWITT RUCKER,)	
)	CASE NO. 5:12CV0443
Petitioner,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
MIKE DEWINE, <i>et al.</i> ,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Respondents.)	[Resolving ECF Nos. <u>8</u> and <u>9</u>]

On February 23, 2012, Petitioner Dewitt Rucker filed a petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#) ([ECF No. 1](#)) alleging three grounds for relief which challenge the constitutional sufficiency of his conviction and sentence. The case was referred to Magistrate Judge Vernelis K. Armstrong for a Report and Recommendation. After the State filed a Motion to Dismiss ([ECF No. 8](#)) that pointed out that Rucker had not exhausted some of his claims, Petitioner moved for stay and abeyance or, in the alternative, to dismiss the petition without prejudice ([ECF No. 9](#)) so that he could seek post-conviction review on the unexhausted claims in state court.

The Court will dismiss the petition in its entirety without prejudice to allow Rucker to exhaust his unexhausted claims in state court and then return to federal court.

Petitioner's Motion for Dismissal Without Prejudice ([ECF No. 9](#)) is granted.

Respondent's Motion to Dismiss ([ECF No. 8](#)) is denied as moot.

IT IS SO ORDERED.

July 30, 2012
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge